

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENDALL BURTON,

No. 2:20-cv-0996 KJN P

Plaintiff,

ORDER

v.

AFSHIN ARYA, et al.,

Defendants.

Plaintiff is a state prisoner, proceeding pro se and in forma pauperis, seeking relief under 42 U.S.C. § 1983. By order filed July 24, 2020, plaintiff's complaint was dismissed, and he was granted leave to file an amended complaint. On August 19, 2020, plaintiff filed an amended complaint. As set forth in the court's prior order, this court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).

Plaintiff did not use the court's form complaint, opting to handwrite his pleading. While plaintiff included critical portions required, i.e., multiple allegations, and his prayer for relief, plaintiff omitted an essential portion of the complaint: section B which identifies the individuals plaintiff intends to name as defendants in this action. The caption of plaintiff's amended complaint offers no assistance because he refers to "Afshin Arya, et al." as defendants. Plaintiff

1 must include all named defendants in the caption of the complaint. Fed. R. Civ. P. 10. In
2 addition, plaintiff is required to identify the name, position and title, and location of each
3 individual named as a defendant.¹ Defendants (and the court) must be able to discern who
4 plaintiff is suing and what cause of action is against which defendant. Because plaintiff has not
5 properly identified the individuals he intends to sue, the court is unable to determine whether
6 plaintiff's allegations in claim one state an Eighth Amendment deliberate indifference claim.

7 As to plaintiff's second claim alleging retaliation, plaintiff identifies no individual as
8 retaliating against him, and simply refers the reader back to his supporting facts from claim one.
9 However, plaintiff's facts in claim one pertain to medical care (or lack thereof) concerning
10 alleged deliberate indifference to his serious medical needs. As explained in the court's prior
11 order (ECF No. 5 at 6), a viable retaliation claim in the prison context has five elements: "(1) An
12 assertion that a state actor took some adverse action against an inmate (2) because of (3) that
13 prisoner's protected conduct, and that such action (4) chilled the inmate's exercise of his First
14 Amendment rights, and (5) the action did not reasonably advance a legitimate correctional goal."
15 Rhodes v. Robinson, 408 F.3d 559, 567-68 (9th Cir. 2005). Plaintiff must identify, with
16 particularity, which individual took what adverse action because of plaintiff's conduct protected
17 under the First Amendment, and that such conduct chilled plaintiff's exercise of such rights and
18 did not reasonably advance a legitimate correctional goal. Plaintiff's allegations concerning
19 deliberate indifference to plaintiff's serious medical needs are insufficient to demonstrate a
20 retaliation claim against a particular defendant, and plaintiff must make clear which individual
21 plaintiff claims retaliated against him.

22 Therefore, plaintiff's amended complaint is dismissed, and plaintiff is granted leave to file
23 a second amended complaint that complies with the instant order and the July 24, 2020 order.

24 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
25 about which he complains resulted in a deprivation of plaintiff's constitutional rights. See, e.g.,
26 West v. Atkins, 487 U.S. 42, 48 (1988). Also, the complaint must allege in specific terms how
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28 ¹ Such information also assists the U.S. Marshal in accomplishing service of process.

1 each named defendant is involved. Rizzo v. Goode, 423 U.S. 362, 371 (1976). There can be no
2 liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a
3 defendant's actions and the claimed deprivation. Rizzo, 423 U.S. at 371; May v. Enomoto, 633
4 F.2d 164, 167 (9th Cir. 1980). Furthermore, vague and conclusory allegations of official
5 participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266,
6 268 (9th Cir. 1982).

7 In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to
8 make plaintiff's amended complaint complete. Local Rule 220 requires that an amended
9 complaint be complete in itself without reference to any prior pleading. This requirement exists
10 because, as a general rule, an amended complaint supersedes the original complaint. See Ramirez
11 v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) ("an 'amended complaint
12 supersedes the original, the latter being treated thereafter as non-existent.'" (internal citation
13 omitted)). Once plaintiff files an amended complaint, the original pleading no longer serves any
14 function in the case. Therefore, in an amended complaint, as in an original complaint, each claim
15 and the involvement of each defendant must be sufficiently alleged.

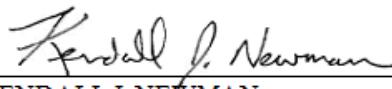
16 In accordance with the above, IT IS HEREBY ORDERED that:

17 1. Plaintiff's amended complaint (ECF No. 11) is dismissed.
18 2. Within thirty days from the date of this order, plaintiff shall file a second amended
19 complaint that complies with the instant order, the July 24, 2020 order, and the requirements of
20 the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The
21 second amended complaint must also bear the docket number assigned to this case and must be
22 labeled "Second Amended Complaint." Failure to file a second amended complaint in accordance
23 with this order may result in the dismissal of this action.

24 3. The Clerk of the Court is directed to send plaintiff the form for filing a civil rights
25 complaint by a prisoner.

26 Dated: August 27, 2020

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KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE